DOCUMENT RESUME

ED 340 122 EA 023 555

AUTHOR Sharp, Linda A.
TITLE Sports.
INSTITUTION National Organization on Legal Problems of Education, Topeka, Kans.
PUB DATE 91
NOTE 17p.; In: Thomas, Stephen B., Ed. The Yearbook of Education Law, 1991, p152-167. (See EA 023 549).
PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Athletic Coaches; *Athletics; Civil Rights; Compliance (Legal); Constitutional Law; *Court Litigation; Drug Use Testing; Due Process; Elementary Secondary Education; Eligibility; Employer Employee Relationship; Equal Education; Equal Protection; Extramural Athletics; Higher Education; Legal Problems; *Legal Responsibility; *School Law; School Responsibility; *Student Participation; Torts

ABSTRACT

This chapter includes all cases, at either the K-12 or higher education level, that deal with student-athletes, coaches, athletic directors, athletic associations, and booster organizations. However, no case law is discussed that pertains to physical education instruction. The cases are discussed in the following sections: (1) eligibility; (2) equality of programs; (3) tort, including assault, defamation, and negligence; (4) employment, including contract disputes, discrimination, and workers' compensation; and (5) miscellaneous. (MLF)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED340122

6

SPORTS

Linda A. Sharp

Introduction / 153
Eligibility / 153
- Admissions / 153
- Academic Issues / 153
- Discipline / 154
- Limitation on Years of Eligibility / 154
- Transfer / 155
- Outside Participation / 155
- Drug Testing / 156

Equality of Programs / 156
- General / 156
- Girl to Play on Boys' Team / 157
- Boy to Play on Girls' Team / 158

Tort / 158
- Intentional / 158
  - Assault / 158
  - Defamation / 159
- Negligence / 160
  - Participants / 160
  - Spectators / 162
- Educational Malpractice / 163

Employment / 163
- Adverse Employment Decisions / 163
- Contract Disputes / 164
- Discrimination / 165
  - Race / 165
- Workers' Compensation / 165
- First Amendment Issues / 165

Miscellaneous / 166
- Taxation / 166
- Public Records / 166
- Real Estate / 167
- Bond Issuance / 167
- First Amendment / 167

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN **OTHER THAN PAPER COPY** HAS BEEN GRANTED BY

F. Delon

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

BEST COPY AVAILABLE

ED340122 333

INTRODUCTION

This Chapter includes all cases, at either the K-12 or higher education level, which deal with student-athletes, coaches, athletic directors, athletic associations, and booster organizations. However, no case law is discussed which pertains to physical education instruction.

ELIGIBILITY

This section contains ten cases: one involved an admissions issue; two dealt with students who were ineligible because of academic problems; two others were brought by students who were involved in disciplinary matters; two dealt with transfer restrictions; one questioned a restriction on outside participation; and two involved drug testing as a prerequisite to athletic participation.

Admissions

A father acting *pro se* lacked standing to sue the NCAA after his emancipated son was denied admission to a state university. He had no right to bring a lawsuit to redress any alleged injury inflicted upon a third party (his son).[1]

Academic Issues

A lower court dismissed a high school wrestler's claim that his exclusion from the wrestling team because of his failure to maintain a satisfactory grade point average (i.e., a 2.0 GPA in five of six classes) constituted a violation of his civil rights. The appellate court affirmed on the basis that the student's interest in participating in wrestling was not a property right and the school board's policy did not exceed the reasonable and legitimate interests of the school system.[2]

The plaintiff, a highly-recruited high school football player, received an ACT score of ten (out of a possible thirty-five) which was not sufficient to allow him to participate in intercollegiate football under the NCAA Proposition 48 requirements. When he retook the ACT six months later he received a score of twenty. The ACT procedures automatically note scores which have increased by more than six points in a twenty-month period. After a thorough investigation of the matter, which involved allowing plaintiff the opportunity to explain the scores or to retake the test if

---

1. Peebles v. National Collegiate Athletic Ass'n, 723 F. Supp. 1155 (D.S.C. 1989), *aff'd without opinion*, 887 F.2d 1080 (4th Cir. 1989).
2. Thompson v. Fayette County Pub. Schools, 786 S.W.2d 879 (Ky. Ct. App. 1990).

he desired, the ACT administration canceled plaintiff's score which made him ineligible to play football at the University of Alabama.

The plaintiff's suit alleged breach of contract, the denial of due process, the infliction of severe emotional distress, and defamation. Summary judgment for the defendant was affirmed by the Eleventh Circuit as it held that: (1) the ACT was not a state actor; (2) there was no breach of contract since the ACT had the right to cancel the score and it acted in good faith in doing so; (3) there was no outrageous conduct by the ACT since it had made a concerted effort to come to a just resolution; and (4) the allegedly wrongful communications were privileged (i.e., the information was only disseminated to officials at plaintiff's high school).[3]

Discipline

A student who was cut from the baseball team at a community college brought a section 1983 action alleging a violation of his liberty and property rights. In a ruling on the defendant college's motion for summary judgment, the court held that there was no liberty interest in playing baseball. However, there was a conceivable property interest since the player had some financial loss due to fines paid for team rules violations.

The community college's motion for summary judgment was denied in regard to plaintiff's claim that the baseball coach's practice of doing "cup checks" was an assault. There was a question of fact regarding whether the player felt apprehension as the coach approached him with a bat to determine whether he was wearing the designated protective attire.[4]

A high school wrestler was suspended from school and from the team because he attended practice while "under the influence" of alcohol. Earlier in the day the student had attended a college visitation day at which he consumed two beers. When he returned to practice that afternoon the assistant coach smelled alcohol on his breath and the coach obtained related information from the student. Thereafter, the principal suspended the student. Both the trial court and the court of appeals found that the high school policy, which defined when a student was "under the influence," was overbroad. However, the Ohio Supreme Court upheld the policy since it found that the definitional elements of the policy were only the starting point in the investigation by administrators.[5]

Limitation on Years of Eligibility

A senior athlete was ruled ineligible to participate in football because he exceeded the number of years a student may attend school and still

---

3. Langston v. ACT, 890 F.2d 380 (11th Cir. 1989).
4. Lesser v. Neosho County Community College, 741 F. Supp. 854 (D. Kan. 1990).
5. *In re* Suspension of Huffer from Circleville High School, 546 N.E.2d 1308 (Ohio 1989).

participate in athletics, according to the rules of the high school athletic association. This rule, which was instituted to prevent the practice of red-shirting, was applied against the plaintiff even though he violated the rule only because he had failed the ninth grade. The West Virginia Supreme Court of Appeals held that the rule was applied unreasonably because it refused to consider the circumstances surrounding why the student had been held back.[6]

Transfer

In an Alabama case, a ninth grader transferred from a private school to a public school after a realignment of school districts occurred due to a desegregation case. The student's transfer, however, was purely voluntary and was not a result of recruiting. Although the lower court enjoined the enforcement of the transfer rule which prevented the student from participating in athletics for one year after the transfer, the state supreme court reversed on the basis that the court should not interfere with the decision of an athletic association absent fraud, lack of jurisdiction, collusion, or arbitrariness.[7]

The parents of a handicapped student sought a preliminary injunction under the Education of the Handicapped Act (EHA) restraining the secondary school athletic association from applying a transfer rule. The student had transferred from a parochial school to a public high school and had been found, after the transfer, to have a learning disability. The Sixth Circuit Court of Appeals dismissed the suit because the parents had not exhausted all available administrative remedies for resolving disputes about a handicapped child's educational program.[8]

Thereafter, the IEP proposed for the student did not include athletic participation. On this issue an administrative law judge held that the athletic association had discriminated against the student by failing to grant a hardship exception. The parents were entitled to a preliminary injunction preventing the athletic association from interfering with the implementation of the ALJ's order allowing the student to participate in athletics.[9]

Outside Participation

An Ohio High School Athletic Association rule prohibited soccer players from participating in both spring independent soccer and fall inter-

---

6. Hamilton v. West Virginia Secondary Schools Activities Comm'n, 386 S.E.2d 656 (W. Va. 1989).
7. Alabama High School Athletic Ass'n v. Scaffidi, 564 So. 2d 910 (Ala. 1990).
8. *See* The Yearbook of Education Law 1990 at 158, Crocker v. Tennessee Secondary School Athletic Ass'n, 873 F.2d 933 (6th Cir. 1989).
9. Crocker v. Tennessee Secondary School Athletic Ass'n, 735 F. Supp. 753 (M.D. Tenn. 1990).

scholastic soccer. The federal district court upheld the rule since it did not violate rights of association, due process, or equal protection.[10] The Sixth Circuit Court of Appeals affirmed but it did not address the merits of the constitutional claims since it found, based on precedent concerning the status of the NCAA, that the high school athletic association was not a state actor.[11]

Drug Testing

Students in grades 6-12 who wished to participate in school-sponsored extracurricular activities had to consent to a drug testing program, which consisted of urinalysis at the beginning of the semester and random tests throughout the year. The federal district court granted a senior student's permanent injunction as it held the program to be unconstitutional.

First, the *Von Raab* decision[12] left no doubt that urinalysis is a search under the fourth amendment. Furthermore, individualized suspicion is necessary in ordinary circumstances in order to conduct a search. The school district's unfounded allegations that those who participated in extracurricular activities were more likely to use drugs or were more likely to sustain injury due to drugs did not constitute the compelling need necessary to undertake a search without reasonable suspicion.[13]

An injunction permanently enjoining the NCAA from enforcing its drug testing program for student-athletes was upheld by an appellate court. The court's ruling, based on the right to privacy set forth in the California Constitution, focused on the fact that the NCAA could not establish "compelling interests" in its testing program. Furthermore, the California Constitution does not require that a party be a state actor; its prohibitions reach private, voluntary associations as well.[14]

EQUALITY OF PROGRAMS

General

A high school student brought a title IX action seeking damages for intentional gender-based discrimination in connection with a sexual relationship with her coach. The Office of Civil Rights had found a title IX violation, but closed the investigation after the school district agreed to

---

10. *See* The Yearbook of Education Law 1990 at 159, Burrows v. Ohio High School Athletic Ass'n, 712 F. Supp. 620 (S.D. Ohio 1988).
11. Burrows v. Ohio High School Athletic Ass'n, 891 F.2d 122 (6th Cir. 1989).
12. National Treasury Employees Union v. Von Raab, 109 S. Ct. 1384 (1989).
13. Brooks v. East Chambers Consol. Indep. School Dist., 730 F. Supp. 759 (S.D. Tex. 1989).
14. Hill v. National Collegiate Athletic Ass'n, 273 Cal. Rptr. 402 (Ct. App. 1990).

affirmative action. The Eleventh Circuit Court of Appeals affirmed the district court's dismissal of the complaint on the basis that damages are not recoverable under a title IX action.[15]

Girl to Play on Boys' Team

A female high school student was prevented from participating on the boys' baseball team by a rule of the Secondary School Activities Commission (SSAC) which prohibited females from participating on a male team if the school had a separate team in a related sport (e.g., softball and baseball). The lower court upheld the validity of the rule in plaintiff's suit which was based on violations of equal protection under both the federal and state constitutions and a violation of the state Human Rights Act.

The West Virginia Supreme Court of Appeals reversed as it found that the rule violated the student's equal protection rights under the federal and state constitutions. Separate sports are permissible if the teams are substantially equivalent; however, the court found, after an extensive review of the rules, skills, and equipment used in baseball and softball, that this was not the case. This rule also violated the student's rights under the Human Rights Act. The SSAC is considered to be a "place of public accommodation" since its entire activity is permeated with a general public interest through open spectator invitation to its sporting events which are generally conducted at public facilities.[16]

The next two cases dealt with the recovery of attorney fees. A female high school student was prohibited from playing on the boys' soccer team by the rules of the conference and the high school athletic association. The plaintiff successfully obtained a temporary restraining order allowing her to play. However, the next year her complaint was dismissed as moot since she chose to play on the newly-formed girls' soccer team. The plaintiff was not considered to be a prevailing party for the purpose of recovering attorney fees since the restraining order was not a favorable ruling on the merits.[17]

In a case from New Jersey, a female high school student filed a complaint with the Commissioner of Education after she was barred from participating on her school's football team. A consent order was granted which allowed her to participate. On the issue of the recovery of attorney fees, the state Supreme Court held that the Commissioner of Education was not authorized to award counsel fees in education discrimination proceedings. However, the plaintiff could seek attorney fees before the Division on

---

15. Franklin v. Gwinnett County Pub. Schools, 911 F.2d 617 (11th Cir. 1990).
16. Israel v. West Virginia Secondary Schools Activities Comm'n, 388 S.E.2d 480 (W. Va. 1989).
17. Libby v. South Inter-Conference Ass'n, 728 F. Supp. 504 (N.D. Ill. 1990).

Civil Rights since these fees are within its authority and the Division on Civil Rights and the Commissioner of Education have concurrent jurisdiction in education discrimination cases.[18]

Boy to Play on Girls' Team

A male high school student brought a section 1983 action challenging the rule of the state interscholastic association which restricted volleyball competition to single-sex teams. Summary judgment for the defendant was affirmed by the Ninth Circuit Court of Appeals as it held that the rule's purpose of preventing females from being displaced in interscholastic competition was substantially related to the goals of redressing past discrimination against females and promoting equality of athletic opportunities between the sexes.[19]

In a case out of Colorado, a male high school senior filed a section 1983 action because he was prevented from participating on the girls' gymnastics team. This case was filed as a companion case with *Rowley* in which a male sought to play on a girls' volleyball team.[20] The plaintiff, in this case, obtained a preliminary injunction which enabled him to participate in gymnastics his senior year. Thereafter, the claim became moot and the case was dismissed. The Tenth Circuit, in denying plaintiff's claim for attorney fees, held that although plaintiff was a prevailing party, it would be unjust to allow the award of fees because, if the case had not been dismissed as moot, the relief which plaintiff requested would have been reversed. The *Rowley* case with identical issues was reversed by the appellate court due to the use of an incorrect legal standard by the district court.[21]

TORT

In 1990, there were twenty-four tort cases dealing with sport. Of these cases, five were intentional torts. Of the eighteen negligence cases, sixteen dealt with participants and two with concerned spectators. One case dealt with educational malpractice.

Intentional

Assault. A student-athlete assaulted a fellow student at a beer party in a dorm which led to a lawsuit against the university for its alleged failure

---

18. Balsley v. North Hunterdon Regional School Dist. Bd. of Educ., 568 A.2d 895 (N.J. 1990).
19. Clark v. Arizona Interscholastic Ass'n, 886 F.2d 1191 (9th Cir. 1989).
20. *See* The Yearbook of Education Law 1989 at 160, Rowley v. Members of the Bd. of Educ., 863 F.2d 39 (10th Cir. 1988).
21. Dahlem v. Board of Educ. of Denver Pub. Schools, 901 F.2d 1508 (10th Cir. 1990).

to adequately supervise the party. The acts of the student-athlete, who had previously assaulted a residence hall advisor, did not constitute a "dangerous condition of the property." Furthermore, the university had no duty to supervise adult college students who were voluntarily drinking beer at a dorm party.[22]

Elementary school students were sexually molested by a teacher/coach during the summer vacation period as they engaged in fund-raising activities for a summer basketball camp. There was no liability by the school district since the only connection between the district and the basketball camp was that the district approved of the use of some of its facilities for camp activities and fund-raising and allowed the distribution of promotional materials on its property.[23]

An insurer brought an action seeking a declaration that the homeowner's policy which it issued to a teacher/coach did not provide coverage for claims arising from the teacher/coach's sexual relationship with a student. The coach had an eighteen month relationship with a high school student who was on his softball team. Even though the actions of the coach were not illegal, the appellate court inferred an intent to harm in his actions; therefore, his behavior was excluded from coverage under the "intentional acts" language of the policy.[24]

Defamation. An assistant basketball coach at a Division I university sued a newspaper for defamation regarding allegations of recruiting violations by the plaintiff. The Kentucky Supreme Court held that the coach was not a limited purpose public figure since he was not involved in a particular and identifiable public controversy. Therefore, actual malice by the newspaper need not be shown.[25]

The United States Supreme Court dealt with the "opinion" exception to the law of defamation in this case brought by a high school wrestling coach. He asserted that he was defamed by a sports reporter who accused him of perjury in testimony given at a high school association hearing relating to an altercation at a wrestling match. The Ohio Supreme Court held that the newspaper was protected by the "opinion" exception. However, the United States Supreme Court reversed as it held that an expression of opinion may be defamatory if the language contains a factual connotation which can be proved true or false.[26]

---

22. Crow v. State, 271 Cal. Rptr. 349 (Ct. App. 1990).
23. D.T. by M.T. v. Independent School Dist. No. 16, 894 F.2d 1176 (10th Cir. 1990).
24. Allstate Ins. Co. v. Calkins, 793 P.2d 452 (Wash. Ct. App. 1990).
25. Warford v. Lexington Herald-Leader Co., 789 S.W.2d 758 (Ky. 1990).
26. Milkovich v. Lorain Journal Co., 110 S. Ct. 2695 (1990).

Negligence

Participants. A club team rugby player who became a paraplegic because of injuries sustained in a tournament at defendant university alleged negligence. Summary judgment was affirmed on behalf of the university as the court held that, in the context of a club sport, the university had no affirmative duty to ascertain the level of fitness or preparedness of visiting clubs participating in a tournament.[27]

Summary judgment was affirmed for defendant college after a student who was injured in an intramural soccer game sued alleging negligent supervision. The fact that plaintiff knew that the opposing team played in a rough manner did not impute this knowledge to the college. Furthermore, plaintiff assumed the risk since the injury sustained was a reasonably foreseeable consequence of playing a high contact game such as soccer.[28]

Three cases dealt with the applicability of a state's recreational use statute/exception to the tort claims act. In the first case, from Nebraska, after the estate of a scuba diver brought a wrongful death action against the university for its negligence in supervising the indoor pool in which decedent drowned, the defendant failed to convince the court that the action was barred by the state's Recreation Liability Act. This Act was meant to encourage the use of land for outdoor recreational use and was not applicable to the university's indoor pool.[29]

The second case, from New York, concerned a child who slid down a snow-covered slope on school property while riding on an inflated innertube. The child fell from the innertube and suffered brain damage from impact with snow and ice. The court held that the activity engaged in was "sledding" as the term is used in the recreational use statute; therefore, the school district was immune from suit.[30]

The third case, from Kansas, dealt with the question of recovery by a high school football player, who was injured as he ran from the practice field to the locker room. The coach directed the players to run in the dark to the locker room after practice. The student slipped in a drainage area and hurt his back. The Kansas Supreme Court held that it was irrelevant whether the injury resulted from negligent supervision or from an artificial condition of the premises. The recreational use exception to the state tort claims act was applicable because the injury resulted from the *use* of the property.[31]

Two cases from Pennsylvania illustrate the applicability of the real estate exception to immunity. The "dangerous condition of the realty" exception to sovereign immunity was not applicable in a case in which

---

27. Fox v. Board of Supervisors, 559 So. 2d 850 (La. Ct. App. 1990).
28. Nganga v. College of Wooster, 557 N.E.2d 152 (Ohio Ct. App. 1989).
29. Cassio v. Creighton Univ., 446 N.W.2d 704 (Neb. 1989).
30. Gruber v. Fairport Cent. School Dist., 556 N.Y.S.2d 965 (Sup. Ct. 1990).
31. Nichols v. Unified School Dist. No. 400, 785 P.2d 986 (Kan. 1990).

an eighteen-year-old nonswimmer with cerebral palsy drowned in a university's Recreation for Exceptional Citizens Program since the allegations really related to the failure to supervise and not to an artificial condition or defect of the land itself.[32]

In a similar construction of this exception, a high school student who was injured in a slip and fall on school district property while participating in a district-sponsored race, was not able to state allegations which fell within the real estate exception. Exceptions to the rule of immunity must be narrowly interpreted.[33]

The Illinois Court of Claims has exclusive jurisdiction over a lawsuit, brought by a university gymnast who suffered a knee injury, against two athletic directors, the gymnastics coach, and the trainer for alleged negligence in the performance of their duties as university employees. Since the defendants acted within the scope of their authority and not in violation of law, there was no jurisdiction outside of the Court of Claims.[34]

A track team met after practice to go to a pizza parlor for an end-of-the-year outing. One of the athletes was seriously injured as the coach's van, driven by the assistant coach, was hit by a truck which failed to stop at an intersection. The issue was whether the insurance coverage which was purchased by the school district to cover interscholastic athletic participation was applicable in this situation. The Washington Court of Appeals found that there was coverage because the pizza party was an "activity" recognized by the state interscholastic activities association. A practice or "turnout" may encompass a morale-building activity such as the pizza gathering planned in this case.[35]

The plaintiff's son was battered by an opposing player in a high school basketball game. The plaintiff alleged that the referees were negligent in failing to protect his son and that the negligence of the referees should be imputed to the school district. The school district's motion for summary judgment was granted; *respondeat superior* cannot be imposed upon the school district since it exerted no control over the manner in which an individual officiates.[36]

Four cases from New York dealt with various aspects of negligence law. First, a student allegedly sustained injury as he fell while playing kickball. The student's application to serve late notice of the claim against the school district was denied. The school had no record of the injury and the defendant would be prejudiced by allowing this claim.[37]

A softball player was injured while she caught for a pitcher during practice in a gymnasium. The thirteen-year-old student was hit in the face

---

32. Musheno v. Lock Haven Univ., 574 A.2d 129 (Pa. Commw. Ct. 1990).
33. Farber v. Pennsbury School Dist., 571 A.2d 546 (Pa. Commw. Ct. 1990).
34. Healy v. Vaupel, 549 N.E.2d 1240 (Ill. 1990).
35. Odessa School Dist. No. 105 v. Insurance Co. of Am., 791 P.2d 237 (Wash. Ct. App. 1990).
36. Kennel v. Carson City School Dist., 738 F. Supp. 376 (D. Nev. 1990).
37. Salyer v. Valley Cent. School Dist., 558 N.Y.S.2d 746 (App. Div. 1990).

by a pitch and she was not wearing a facemask, contrary to safety instructions in the high school association handbook. On a motion by defendant for summary judgment, the trial court held that there were genuine issues of material fact regarding whether the defendants had exercised reasonable care to protect the student from any unassumed, concealed, or unreasonably incurred risks during practice. The appellate court affirmed the denial of summary judgment.[38]

A student fell on a patch of ice in a schoolyard while he was playing touch football prior to the start of the school day. The jury found that the school district was negligent in failing to maintain the schoolyard in a reasonably safe condition and in permitting unsupervised play. The jury also found that the student assumed the risk in playing on this icy surface but did not reduce the award of over $4 million because of plaintiff's conduct. The appellate court ordered a new trial to apportion damages based on the student's assumption of risk.[39]

A college student fell in a hole alleged to be several feet wide and several inches deep, while playing intramural football. The university moved for summary judgment arguing that the student had assumed the risk. The court denied the motion, however, because there were genuine issues of fact regarding whether the hole in the field was typical of the normal terrain for football or whether it was an unreasonable, unnecessary, and unforeseen addition to the normal hazards of the game.[40]

A middle school football player was injured in a fight with a teammate after practice. A complaint was brought alleging improper supervision by the school district and by the teammate's mother. The trial court's dismissal of the complaint was affirmed because the plaintiff had voluntarily entered into the fight and there was no support for plaintiff's contention that the teammate's mother had knowledge of her son's vicious propensities.[41]

A football player who was injured in a summer weight training program which was supervised by two high school coaches sued the superintendent, school board members, and the coaches for negligence. Summary judgment was granted to all defendants on the basis of sovereign immunity. The coaches were engaged in a discretionary function since they were exercising judgment in supervising athletic training.[42]

Spectators. The plaintiff was injured when the student manager of the volleyball team wheeled the volleyball stand onto the gym floor and the stand separated from the support and landed on the plaintiff's foot. The action against the school district was barred because plaintiff did not

38. Parisi v. Harpursville Cent. School Dist., 553 N.Y.S.2d 566 (App. Div. 1990).
39. Chan v. Board of Educ. of City of N.Y., 557 N.Y.S.2d 91 (App. Div. 1990).
40. Henig v. Hofsta Univ., 553 N.Y.S.2d 479 (App. Div. 1990).
41. Borelli v. Board of Educ., 550 N.Y.S.2d 120 (App. Div. 1989).
42. Gasper v. Freidel, 450 N.W.2d 226 (S.D. 1990).

commence the action timely. The action against the student was also dismissed because she was considered to be an "employee" of the school for the purposes of the state's tort immunity act. Even though the student manager was a volunteer, there was no reason not to protect her when a janitor engaged in the same activity would have immunity as an employee.[43]

A seventeen-year-old was hit in the eye with a tennis ball as he stood inside the fence of the tennis court watching a match. There were bleachers outside the fence, but the plaintiff chose to stand inside. The appellate court affirmed summary judgment for the defendant school district as it held that there was no duty owed to the plaintiff who was sufficiently mature to recognize the obvious dangers of standing inside the fence.[44]

Educational Malpractice

A former basketball player asserted a number of tort and contract claims against the university which recruited him although its representatives knew that he was educationally unprepared to attend the school. The federal district court, as it granted defendant's motion to dismiss, denied the availability of tort claims in educational malpractice and negligent infliction of emotional distress. Also, the court was unable to find the breach of an express contractual provision which would give rise to a cause of action.[45]

EMPLOYMENT

Ten cases which dealt with employment issues were decided in 1990. Four of those cases involved adverse employment decisions, two concerned contract disputes, one case pertained to race discrimination, one case dealt with workers' compensation and two cases related to first amendment issues.

Adverse Employment Decisions

A terminated football coach was unsuccessful in his wrongful discharge action against the university and its president. As an at-will employee, the plaintiff had no action available for wrongful discharge. Additionally, he was not entitled to a pretermination hearing since he had no property interest in his position.[46]

---

43. Sunderland v. Tri-City Community Unit School Dist. No. 1, 549 N.E.2d 992 (Ill. App. Ct. 1990).
44. Chareas v. Township High School Dist. No. 214, 553 N.E.2d 23 (Ill. App. Ct. 1990).
45. Ross v. Creighton Univ., 740 F. Supp. 1319 (N.D. Ill. 1990).
46. Frazier v. University of D.C., 742 F. Supp. 28 (D.D.C. 1990).

A former university baseball coach brought a wrongful discharge action against the university and its athletic director. Based on language in university policies, there were material issues of fact regarding the existence of an implied in fact agreement not to terminate except for good cause.[47]

A teacher/coach who had taught for nine years was charged with certain irregularities while giving an exam. The plaintiff teacher was not fired but he was transferred to another school where he continued to teach but was given no coaching assignments. The plaintiff's fourteenth amendment claims were not upheld because a reassignment was not a sufficient change in status to violate a constitutionally protected liberty interest. Furthermore, the plaintiff had no protected property interest in continuing to teach and coach at just one location.[48]

In a case out of South Dakota, a tenured teacher was relieved of his basketball coaching assignment. The coach was not given notice of nonrenewal by the date mandated under the Continuing Contract Law (CCL). The state supreme court found that the notice provisions of the CCL were applicable to coaching contracts. Coaching is a teaching assignment and all coaches have to be persons certified as teachers; therefore, a coach is a teacher entitled to the benefits of the CCL.[49]

Contract Disputes

The board of education posted a position announcement for a "physical education teacher and athletic trainer." The plaintiff applied for the teaching position, but not for the athletic trainer opening. When another person was hired for the dual role, the plaintiff filed a grievance alleging that the job posting was an improper joinder of employment positions which violated West Virginia law. The state high court agreed with the plaintiff as it held that the position of athletic trainer was extracurricular and required a separate contract of employment.[50]

The plaintiff was employed as an athletic director and football coach; he taught no classes in the 1988-89 school year. In 1989-90 the district assigned the plaintiff to teach two classes as well as to continue to serve as coach and athletic director. The plaintiff sought an injunction alleging that the assignment of additional duties was a breach of contract and that the reassignment provision in the employment contract was a contract of adhesion. The appellate court found that the district was within its rights in assigning the teaching duties. Also, there was not a reassignment at

47. Wood v. Loyola Marymount Univ., 267 Cal. Rptr. 230 (Ct. App. 1990).
48. Thomas v. Smith, 897 F.2d 154 (5th Cir. 1989).
49. Reid v. Huron Bd. of Educ., 449 N.W.2d 240 (S.D. 1989).
50. Cruciotti v. McNeel, 396 S.E.2d 191 (W. Va. 1990).

issue here; the plaintiff was simply assigned additional duties. The court also noted that the "aggrieved" plaintiff was to receive the largest pay increase in the district.[51]

Discrimination

Race. In Texas, white and Hispanic football coaches brought a section 1983 action after they were reassigned from the varsity football team to the sophomore team so that black coaches could be appointed to the varsity staff. The federal district court held that this reassignment violated the equal protection clause and plaintiffs' motion for summary judgment was granted.[52]

The federal district court then dealt with the remaining issues of additional injunctive relief and monetary damages. Since the plaintiffs did not suffer any loss of wages, they were awarded $1 each for the equal protection violations. However, they were entitled to recover $5,000 each for their mental distress and anguish. No further injunctive relief was necessary since one coach had been reinstated and the other coach withdrew his request for reinstatement.[53]

Workers' Compensation

A community college instructor and coach of racket sports who sustained a work-related shoulder injury was unable to show that he was totally disabled and had reached maximum medical improvement.[54]

First Amendment Issues

A university biology teacher, who was not granted tenure, asserted that tenure was denied in retaliation for his exercise of free speech rights. The teacher made statements that the professors at the university showed favoritism to athletes and pre-med students and that there was an exchange of grades for sex. Although the court found that his remarks related to a matter of public concern, his speech was not a substantial or motivating factor in the decision not to grant tenure.[55]

A maintenance supervisor for a school district was terminated and argued that his termination was in retaliation for his complaints about the alleged misconduct of the basketball coach. The plaintiff had complained

---

51. Trevino v. Board of Trustees, 783 S.W.2d 806 (Tex. Ct. App. 1990).
52. *See* The Yearbook of Education Law 1990 at 169, Covington v. Beaumont Indep. School Dist., 714 F. Supp. 1402 (E.D. Tex. 1989).
53. Covington v. Beaumont Indep. School Dist., 738 F. Supp. 1041 (E.D. Tex. 1990).
54. McGehee v. Broward Community College, 559 So. 2d 368 (Fla. Dist. Ct. App. 1990).
55. Coats v. Pierre, 890 F.2d 728 (5th Cir. 1989).

about the coach's use of profanity and supposed physical abuse of his players. However, in investigating this matter, plaintiff greatly disrupted the operation of the school by taking students out of class to question them. Furthermore, his work suffered because he spent so much time and energy investigating the coach. Therefore, the Fifth Circuit Court of Appeals found that his speech caused a severe disruption in the operation of the school system and thus, his speech was beyond the protection of the first amendment.[56]

MISCELLANEOUS

Taxation

The United States Tax Court determined that the NCAA owed unrelated business income tax on the advertising revenues it received from the programs sold at the Men's Division I Basketball Championship. The appellate court reversed on the basis that the sale of ad space was not a "regularly carried on" business such that the revenue therefrom was taxable as unrelated business income.[57]

The Kansas Supreme Court reversed the Board of Tax Appeals denial of an exemption from sales tax for the NCAA. The state high court concluded that the NCAA was entitled to exemption as an "educational institution."[58]

Public Records

In an Oregon case, a newspaper publisher brought an action under the public records law to have a school district divulge the names and addresses of coaches it hired as replacements during a strike. The replacement coaches had been promised that their personal data would be kept confidential. The Oregon Court of Appeals held that the names of the replacement coaches must be divulged. However, the addresses were submitted in confidence and may reasonably be considered information which is confidential.[59]

The Oregon Supreme Court reversed as it held that both names and addresses were public records which cannot be exempted absent an individualized showing of justification for exemption. Disclosure under

---

56. Nieto v. San Perlita Indep. School Dist., 894 F.2d 174 (5th Cir. 1990).
57. National Collegiate Athletic Ass'n v. C.I.R., 914 F.2d 1417 (10th Cir. 1990).
58. National Collegiate Athletic Ass'n v. Kansas Dep't of Revenue, 781 P.2d 726 (Kan. 1989).
59. *See* The Yearbook of Education Law 1990 at 171, Guard Publishing Co. v. Lane County School Dist. No. 4J, 774 P.2d 494 (Or. Ct. App. 1989).

the statute is the norm and a public body may not adopt a policy that seeks to deprive citizens of their right to inspect public records.[60]

Real Estate

The Illinois Legislature conveyed 18.5 acres of lake-bed to a private university to use for the construction of athletic facilities. An injunction was granted to restrain the university from proceeding; the conveyance violated the public trust doctrine since the primary purpose of the grant was to satisfy a private interest.[61]

Bond Issuance

The voters of defendant school district approved a bond proposition of $11 million for the construction of a domed athletic facility at the high school. The plaintiffs sought to enjoin the construction of this facility on the basis that it was not a "school building" under the statute which defined the projects for which bonds could be issued. The appellate court denied the injunction holding that the primary use of the dome was as a school building. The fact that the facility may be extravagant or that nonschool uses of the facility may be contemplated does not alter the fact that the facility is a school building.[62]

First Amendment

A family planning group challenged the rejection of its ads for publication in high school athletic event programs, newspapers, and the yearbook. The Ninth Circuit Court of Appeals affirmed judgment for the school district on the basis that all three publications were nonpublic fora and the ads were reasonably rejected on the ground that they would be controversial and would distract from the educational mission of the high school.[63]

---

60. Guard Publishing Co. v. Lane County School Dist. No. 4J, 791 P.2d 854 (Or. 1990).
61. Lake Mich. Fed'n v. United States Army Corps of Eng'rs, 742 F. Supp. 441 (N.D. Ill. 1990).
62. Tucson Elec. Power Co. v. Round Valley Unified School Dist. No. 10, 789 P.2d 399 (Ariz. Ct. App. 1990).
63. Planned Parenthood of So. Nev., Inc. v. Clark County School Dist., 887 F.2d 935 (9th Cir. 1989).